

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

CRYSTAL MALIK,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF STATE,

Defendant.

Civil Action No. 3:24-cv-357

COMPLAINT

Introduction

1. Plaintiff Crystal Malik challenges the failure of Defendant United States Department of State (“DOS”) to timely respond to a clear and targeted Freedom of Information Act (“FOIA”) request.

2. On April 4, 2024, Ms. Malik submitted her FOIA request with DOS.

3. Over a month later—and well beyond the statutory response deadline—Ms. Malik still has not received *any* responsive documents.

4. DOS’s failure to properly and timely respond to Ms. Malik’s FOIA request is a clear violation of the Freedom of Information Act. Accordingly, the Court should order DOS to fully and immediately respond to the request.

Jurisdiction and Venue

5. This case arises under the Freedom of Information Act, 5 U.S.C. § 551 *et seq.* This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) as well as 28 U.S.C. § 1331, as a civil action arising under the laws of the United States.

6. Venue is proper in this judicial district under 5 U.S.C. § 552(a)(4) because Plaintiff resides within this district and division.

Parties

7. Plaintiff Crystal Malik is an immigration attorney who resides in Henrico County, Virginia.

8. Ms. Malik has standing because an order requiring DOS to respond to her FOIA request will directly redress her injury caused by their failure to respond as required by statute.

9. Defendant United States Department of State is an “agency” within the meaning of the governing statutory definition at 5 U.S.C. § 551(1) and therefore subject to the requirements of the Freedom of Information Act.

Factual Allegations

10. On April 4, 2024, Ms. Malik submitted a written, two-part FOIA request to DOS seeking:

1. Any and all policies and/or records relating to the processing of TN visa applications under the Scientific Technician/Technologist occupational category created, developed, maintained, used, implemented, and/or disseminated (internally or externally) by the Department of State, Department of State employees, or contractors working at or under the direction of the Department of State, on or after October 1, 2023.
2. Any and all policies and/or records relating to the processing of TN visa applications under the Engineer occupational category created, developed, maintained, used, implemented, and/or disseminated (internally or externally) by the Department of State, Department of State employees, or contractors working at or under the direction of the Department of State, on or after October 1, 2023.

(See Ex. 1 (FOIA request and confirmation page).)

11. These documents were urgent to Ms. Malik’s practice and the immigration-law community given recently observed—but undisclosed—changes to TN-visa adjudications by DOS

employees.

12. Ms. Malik submitted the FOIA request to DOS's designated FOIA fax number at 202-485-1669 and received a confirmation page showing that it was successfully transmitted and therefore received by DOS on April 4, 2024. (*Id.*)

13. DOS was required to produce responsive records within 20 business days of the date it received the FOIA request, or by May 2, 2024.

14. Having heard nothing by the statutory deadline to respond, Ms. Malik emailed DOS's designated FOIA email address on May 2, 2024, to inquire into the status of her FOIA request. (*See* Ex. 2 (May 2, 2024, email).) DOS did not respond.

15. Even had DOS sought the ten-business-day extension of time contained in 5 U.S.C. § 552(a)(6)(B), the deadline to respond would be May 16, 2024, which has now passed.

16. To date, DOS has not produced any of the records sought under Ms. Malik's FOIA request.

17. Ms. Malik has exhausted her administrative remedies under the Freedom of Information Act because the agency has failed in its statutory obligation to timely produce the requested records. 5 U.S.C. § 552(a)(6)(C).

CAUSE OF ACTION

COUNT I

Freedom of Information Act Violation (5 U.S.C. § 552)

18. Plaintiff incorporates the allegations of the preceding paragraphs as if fully set forth herein.

19. The FOIA statute requires that an agency make a determination on a FOIA request within 20 business days. 5 U.S.C. § 552(a)(6)(A)(i). An agency may extend its response time in

case of “unusual circumstances” by no more than 10 business days provided it sends the requestor “written notice.” *Id.* § 552(a)(6)(B)(i).

20. Ms. Malik’s FOIA request submitted to Defendant DOS reasonably described the records at issue and adhered to all applicable rules and regulations.
21. The records requested by Ms. Malik are within Defendant’s control.
22. The requested records do not fall within any FOIA exception or exemption.
23. Defendant DOS has violated FOIA, 5 U.S.C. § 552, by failing to timely and fully produce the records that Ms. Malik requested.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that this Court grant the following relief:

1. Order Defendant to immediately and fully respond to Plaintiff’s FOIA request;
2. Award Plaintiff her attorneys’ fees and costs, including but not limited to those recoverable under the Freedom of Information Act; and
3. Grant any other relief that this Court may deem just and proper.

Dated: May 17, 2024.

Respectfully submitted,

/s/
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